

THE LAW OFFICE OF



900 MERCHANTS CONCOURSE SUITE 214 WESTBURY, NEW YORK 11590

ROBERT F. DANZI

November 19, 2008

OF COUNSEL:

JOAN FERRERETTI  
ADMITTED IN DC & FL

MARK L. LIEBERMAN  
ADMITTED IN NY & FL

Honorable Leonard D. Wexler  
United States District Court for the Eastern District of NY  
Long Island Federal Courthouse  
944 Federal Plaza  
Central Islip, New York 11772

Re: *Gallelli v. Crown Imports, LLC, et al*, No. 08-CV-3372

Dear Judge Wexler:

I write on behalf of plaintiffs in response to Cravath, Swaine & Moore, LLP's letter dated November 14, 2008, on behalf of its defendant, Grupo Modelo S.A., de C.V., aka G Modelo Corporation ("Modelo"). By way of brief background, this case arises from the explosion of a beer bottle manufactured, bottled and distributed by Modelo, which was placed into the stream of commerce, and sold in New York, where it exploded and blinded the right eye of an 18 month old infant, the plaintiff herein. The plaintiff is a resident of New York, Suffolk County, in the Eastern District of New York, where the injury occurred.

First, plaintiffs object, as untimely, to said defendant's request for a conference in which to request leave to make a motion to dismiss the Complaint. The Summons and Complaint in this matter was filed on August 19, 2008. It was served on Modelo on August 21, 2008. On September 4, 2008, I was contacted by David T. Ferrara, Esq. on behalf of Modelo with a request for extension of time to answer and/or otherwise provide a responsive pleading. I agreed and gave an extension to October 3, 2008 (see attached Stipulation). I was then contacted by Cravath, Swaine & Moore, LLP on behalf of Modelo just prior to October 3, 2008, with a request for a second extension of time to answer or move. I again agreed and gave an extension to answer or move until November 14, 2008 (see attached Stipulation).

On the very last day provided for in the second extension of time to answer or move, the defendant wrote its letter to the Court asking for permission to move to strike plaintiffs' complaint. Defendant failed to answer or move by November 14, 2008 and is presently in default. All affirmative defenses are deemed waived by the default. Defendant's letter dated November 14, 2008 is not an answer or a motion, nor does it constitute a request for additional time to answer or move, or make a showing of good cause for its neglect to answer or move in a timely manner. The Court should



determine that Modelo has waived its right to make a pre-answer motion to dismiss.

Second, Modelo's November 14, 2008 letter raises numerous questions of fact which are *prima facie* inconsistent with its press releases and public representations, all of which require discovery which would preclude pre-answer dismissal. Modelo could have preserved a personal jurisdiction defense in its answer, but failed to timely do so. Certainly, a pre-answer motion to dismiss is inappropriate especially after securing two separate extensions of time to answer or move.

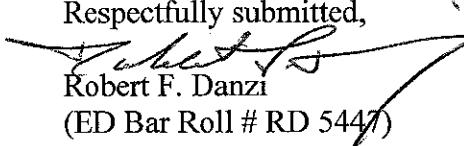
If Modelo is claiming a defense based on service, and this is not deemed waived by Mondelo's default, and proves to have any merit, plaintiffs can easily remedy any defect in service. The injured plaintiff is an infant; the statute of limitations is tolled until 3 years after he reaches majority. Therefore, this would not be a basis for dismissing the Complaint in any event. Modelo has not made any showing of prejudice. If the Court is inclined to entertain Modelo's motion, plaintiffs will seek leave to cross-move to conduct pre-answer discovery, to strike affirmative defenses, and for other relief.

Moreover, the co-defendants, who are joint venturers with Modelo in the import, sale and distribution of the beer bottles in New York State, have interposed cross claims, which presumably will be served now that Modelo has appeared. Assuming these cross claims of joint venturers are not frivolous, Modelo is the correct defendant and should not be dismissed in any event. These cross claims indicate that co-defendants have information regarding Modelo that will require discovery before any potentially dispositive motions can be entertained.

Plaintiffs request that Mondelo be directed to serve an answer forthwith, and that a date be set for the Rule 26 scheduling conference.

Thank you for your courtesy and consideration.

Respectfully submitted,

  
Robert F. Danzi  
(ED Bar Roll # RD 5447)

Enc.



cc: Gary A. Bornstein, Esq.  
Cravath, Swaine & Moore, LLP  
Worldwide Plaza  
825 Eighth Avenue  
New York, NY 10019-7475

Thomas F. Cerussi, Esq.  
One North Lexington Avenue  
White Plains, NY 10601

Brian S. Brandman, Esq.  
Morenus, Conway, Goren & Brandman  
58 South Service Road, Suite 350  
Melville, NY 11747

BY CM/ECF

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

NICHOLAS GALLELLI, an infant, by an  
through his Parents and Natural Guardians,  
MARC GALLELLI and LINDA GALLELLI,  
and MARC GALLELLI and LINDA  
GALLELLI, Individually

Civil Action No. CV-08-3372

Plaintiffs,  
-against-

**STIPULATION TO EXTEND  
DEFENDANT G MODELO'S  
TIME TO ANSWER**

CROWN IMPORTS, LLC, GRUPO  
MODELO, S.A. de C.V., aka G MODELO  
CORPORATION, BARTON BRANDS,  
LTD., and BARTON BEERS, LTD.,

Defendants.

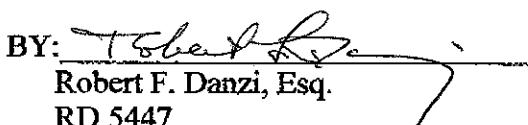
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**IT IS HEREBY STIPULATED AND AGREED** by and between the parties that the Time for Defendant G Modelo to Answer and/or otherwise provide a responsive pleading is hereby extended until October 3, 2008.

**IT IS FURTHER HEREBY STIPULATED AND AGREED** that a facsimile and/or copied signature shall have the same force and effect as an original signature.

LAW OFFICES OF ROBERT F. DANZI  
Attorney for Plaintiffs

LAW OFFICES OF DAVID T. FERRARA  
Attorney for Defendant, G Modelo

BY: 

Robert F. Danzi, Esq.  
RD 5447  
900 Merchants Concourse, Suite 214  
Westbury, New York 11590  
(516) 228-4622

BY:

David T. Ferrara, Esq.  
Attorneys for the Defendant  
110 Wall Street  
11<sup>th</sup> Floor  
New York, NY 10005

## LAW OFFICES OF DAVID T. FERRARA, LLC

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**FACSIMILE TRANSMITTAL SHEET**

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TO: FROM:Robert F. Danzi, Esq. David T. Ferrara

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COMPANY: DATE:9/4/2008

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FAX NUMBER: TOTAL NO. OF PAGES, INCLUDING  
COVER:516-228-6569 2

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PHONE NUMBER: SENDER'S REFERENCE NUMBER:

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**RE:**

Nicholas Gallelli vs. Crown Importers, et al.  
Civ. Action No. CV-08-3372  
Our File No. GBS-1225-EDNY

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URGENT  FOR REVIEW  PLEASE COMMENT  PLEASE REPLY  PLEASE RECYCLE

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## NOTES/COMMENTS:

Please see attached. Thank you – Dave

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

NICHOLAS GALLELLI, an infant, by and  
through his Parents and Natural Guardians,  
MARC GALLELLI and LINDA GALLELLI, and  
MARC GALLELLI and LINDA GALLELLI,  
Individually,

Plaintiffs,

vs.

CROWN IMPORTS, LLC, GRUPO MODELO,  
S.A. de C.V., aka G MODELO CORPORATION,  
BARTON BRANDS, LTD., and BARTON  
BEERS, LTD.,

Defendants.

No. 08 CV 3372

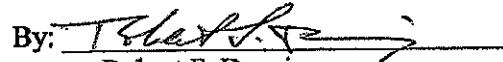
[PROPOSED] STIPULATED ORDER  
EXTENDING TIME

IT IS HEREBY STIPULATED AND AGREED, by and between plaintiffs  
Nicholas Gallelli, Marc Gallelli and Linda Gallelli and defendant "Grupo Modelo, S.A. de C.V.,  
aka G Modelo Corporation", that said defendant's time to move against or answer the complaint  
is hereby extended from October 3, 2008, to and including November 14, 2008. No previous  
requests for an extension have been made to the Court.

This stipulation is without prejudice to the defendant's potential defenses, including but not limited to lack of personal jurisdiction and failure to effect proper service.

September 30, 2008

LAW OFFICE OF ROBERT F. DANZI

By:   
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Westbury, NY 11590  
(516) 228-4226

*Attorneys for plaintiffs*

CRAVATH, SWAINE & MOORE LLP

By:   
Gary A. Bornstein  
825 Eighth Avenue  
New York, NY 10019  
(212) 474-1084

*Attorneys for "Grupo Modelo, S.A. de C.V., aka  
G Modelo Corporation"*

**SO ORDERED:**

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Hon. Leonard D. Wexler  
United States District Judge